SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 45

WILLIAM C. LINN, PETITIONER,

vs.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., JULY 28, 1965

[fol. A]

No. 15,548

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

WILLIAM C. LINN, Plaintiff-Appellant,

v.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY and W. T. ENGLAND, jointly and severally, Defendants-Appellees.

Appeal from the District Court of the United States for the Eastern District of Michigan, Southern Division.

[File endorsement omitted]

[fol. 1]

Appendix for Appellant—Filed November 18, 1963

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 23331

WILLIAM C. LINN, Plaintiff-Appellant,

v.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY and W. T. ENGLAND, jointly and severally, Defendants-Appellees.

RELEVANT DOCKET ENTRIES

1962		
Dec.	17	Libel filed—summons issued.
1963		
Jan.	7	Appearance of United Plant Guard, Local 114, Benton I. Bilbrey & W. T. England filed.
"	"	Answer of Deft. Leo J. Doyle filed.
"	"	Defts. United Plant Guard Workers, Benton I. Bilbrey & W. T. England Motion to dismiss filed. Hearing Jan. 21/63.
"	28	Affidavit of Benton I. Bilbrey filed.
"	"	Motion to dismiss heard and taken under advisement with briefs to be filed.
June	5	Memorandum of opinion granting defts' motion to dismiss filed and entered.
"	7	Amended complaint filed.
"	20	Order granting motion to dismiss of defts. United Plant Guard Workers of America, Benton I. Bilbrey and W. T. England, for lack of jurisdiction, filed and entered.

[fol. 2]

July	19	Notice of appeal filed.
*Aug.	19	Brief in opposition to motion to dismiss filed.
* "	"	Answer to ptf's brief in opposition to motion to dismiss filed.
* "	"	Memorandum of points and authorities in support of motion to dismiss filed.
* "	"	Affidavit of Benton I. Bilbrey, filed.

*The chronology of these docket entries, as they appear here, may be misleading. In actual fact, these starred documents were submitted to the Court in the following sequence:

(footnote continued)

a) Memorandum of Points and Authorities in Support of Motion to Dismiss, filed with the Court on January 28, 1963.

b) Brief in Opposition to Motion to Dismiss filed with the Court on March 13, 1963.

c) Answer to Plaintiff's Brief in Opposition to Motion to Dismiss, filed with the Court on May 7, 1963.

d) Affidavit of Benton I. Bilbrey, dated April 30, 1963, attached to Answer to Plaintiff's Brief in Opposition, filed with the Court on May 7, 1963.

These documents and papers were held by the Court in its personal file, and not inserted in the official Court file until request was made therefor on August 19, 1963. Thus, the "filing date" follows the actual date of submission of these documents to the Court by several months in each of these instances.

[fol. 3]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

COMPLAINT—Filed December 17, 1962

Count I

Now comes William C. Linn plaintiff herein, by and through his attorneys, Welday, O'Leary & Goldstone, and complains of United Plant Guard Workers of America, Local 114, a labor association, Leo J. Doyle, Benton I. Bilbrey, and W. T. England, jointly and severally, defendants herein, and says,

1. Plaintiff is a resident of the State of Ohio, and the defendants United Plant Guard Workers of America, Local 114, a labor association, Leo J. Doyle, Benton I. Bilbrey, and W. T. England are residents of the State of Michigan. The matter in controversy exceeds, exclusively of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

2. That plaintiff is now and has been for years past employed by Pinkerton's National Detective Agency, Inc., as an Assistant General Manager for the North Central Region. In such capacity, plaintiff has supervisory control over Agency offices in the cities of Minneapolis, Minnesota; Milwaukee, Wisconsin; Chicago, Illinois; Detroit, Michigan; and Toledo, Columbus, and Cleveland, Ohio.

3. That defendant United Plant Guard Workers of America, Local 114 is a labor association maintaining offices at 13722 Linwood, Detroit, Michigan. Defendant Benton I. Bilbrey is and has been during the time of the actions complained of herein, President of said Local 114. Defendant W. T. England is and has been during the time of the actions complained of herein Vice-President of said [fol. 4] Local 114. Defendant Leo J. Doyle was during the time of the actions complained of herein, employed by plaintiff's employer as a guard.

4. That from on or about October 1962 up to and including on or about December 7, 1962, at Detroit, Michigan, the defendants herein did unlawfully, wantonly and maliciously conspire, confederate and agree among and with each other and others whose names are presently unknown to plaintiff to libel and defame plaintiff.

5. That during the times aforesaid, defendants did conspire to maliciously publish of and concerning plaintiff, by mailing and/or circulating among some or all of plaintiff's employees the following hand printed false and defamatory matter:

"(7) Now we find out that Pinkerton's has had a large volume of work in Saginaw they have had it for years.

United Plant Guard Workers now has evidence

A. That Pinkerton has 10 jobs in Saginaw, Michigan.

B. Employing 52 men.

C. Some of these jobs are 10 yrs. old!

(8) Make you feel kind sick & foolish.

(9) The men in Saginaw were deprived of their *right* to VOTE in three N. L. R. B. elections. Their names were not summitted (sic). These guards were voted into the Union in 1959! These Pinkerton guards were *robbed* of pay increases. The Pinkerton manegers (sic) were LYING to us—all the time the contract was in effect.

[fol. 5] No doubt the Saginaw men will file criminal charges.

Somebody may go to Jail!"

6. That plaintiff is and was one of the managers referred to by defendants.

7. That thereby defendants meant and intended to mean and intended for the readers thereof to understand that plaintiff had deliberately lied to part or all of Pinkerton plant guard employees; that plaintiff had lied and/or deliberately falsified information required of him to be submitted to the National Labor Relations Board; that plaintiff had lied to or deliberately misled Pinkerton employees concerning a prior Union contract; that plaintiff had deliberately withheld from Pinkerton employees wages earned through pay increases; that plaintiff had committed certain criminal acts for which he would be prosecuted.

8. That the said words and material are and were wholly false, defamatory and untrue all of which was known to defendants.

9. That the said false and defamatory words and material are libelous per se.

Count II

1. Plaintiff realleges all those allegations contained in paragraphs 1 through 3 of Count I hereof, and said Counts are restated and incorporated hereunder by reference thereto.

2. That on or about December 7, 1962, at Detroit, Michigan, the defendants herein did wilfully and maliciously pub-

[fol. 6] lish and caused to be published of and concerning the plaintiff, by mailing to one Arthur Bottini, 721 Casgrain, Detroit, Michigan, the following hand printed false and defamatory matter:

"(7) Now we find out that Pinkerton's has had a large volume of work in Saginaw they have had it for years.

United Plant Guard Workers now has evidence

A. That Pinkerton has 10 jobs in Saginaw, Michigan.

B. Employing 52 men.

C. Some of these jobs are 10 yrs. old!

(8) Make you feel kind sick & foolish.

(9) The men in Saginaw were deprived of their *right* to VOTE in three N. L. R. B. elections. Their names were not summitted (sic). These guards were voted into the Union in 1959! These Pinkerton guards were *robbed* of pay increases. The Pinkerton managers (sic) were LYING to us—all the time the contract was in effect.

No doubt the Saginaw men will file criminal charges.

Somebody may go to Jail!"

3. That plaintiff herein is specifically named elsewhere in the publication as one of the managers referred to in the words and material quoted immediately above.

4. That thereby defendants meant and intended to mean [fol. 7] and were understood by the reader and/or readers of said false and defamatory material as meaning that plaintiff had deliberately lied to part or all of Pinkerton plant guard employees, that plaintiff had lied and/or deliberately falsified information required of him to be submitted to the National Labor Relations Board, that plaintiff had lied to or deliberately misled Pinkerton employees concerning the union contract, that plaintiff had deliberately withheld wages earned through automatic pay increases

from Pinkerton employees, that plaintiff had committed certain criminal acts for which he would be prosecuted.

5. That the said words and material are wholly false.

6. That the said false and defamatory words and material are libelous per se.

Wherefore, plaintiff demands judgment against the defendants herein jointly and severally in the amount of Five Hundred Thousand and no/100 ($500,000.00) Dollars, together with costs and attorney fees so most wrongfully sustained.

Welday, O'Leary & Goldstone, By Donald F. Welday, Jr., 1180 First National Building, Detroit 26, Michigan, WOodward .....

[fol. 8]

ENTRY OF APPEARANCE—Filed January 7, 1963

Notice of Appearance (omitted in printing).

[fol. 9]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

MOTION TO DISMISS COMPLAINT—Filed January 7, 1963

Defendants, United Plant Guard Workers of America, Local 114, Benton I. Bilbrey and W. T. England, through their attorneys, Livingston, Ross & Van Lopik, move the Court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendants upon which relief can be granted.

2. To dismiss the action on the ground that the Court lacks jurisdiction because the amount actually in controversy is less than $10,000.00, exclusive of interests and costs and the requisite diversity of citizenship is not alleged.

3. To dismiss the action because this Court lacks jurisdiction over the subject matter. The subject matter of both counts of the complaint involve matters relating to the self organization rights and concerted activities of employees under the Labor Management Relations Act of 1947, as amended, 29 U.S.C. Sec. 151, et seq. All of the conduct complained of in both counts of said complaint is arguably protected by Section 7 of said statute, or prohibited by Section 8, and is within the exclusive jurisdiction of the National Labor Relations Board.

This motion is based upon the files and records in this cause and the affidavit of Benton I. Bilbrey hereto attached.

Dated: January 7, 1963.

Livingston, Ross & Van Lopik, By Winston L. Livingston, Attorneys for Defendants, 2144 First National Building, Detroit 26, Michigan, WOodward 2-4620.

[fol. 10]

ATTACHMENT TO MOTION

AFFIDAVIT OF BENTON I. BILBREY

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

BENTON I. BILBREY, being first duly sworn, deposes and says:

1. That he is the duly elected and acting President of defendant, United Plant Guard Workers of America Local 114 (hereinafter referred to as "Local 114"), and has served continuously in said capacity since the year 1957.

2. That on or about December 13, 1962, an unfair labor practice charge against Local 114, previously filed with the National Labor Relations Board, was served on said Local Union. The unfair labor practice charge was filed by Pinkerton's National Detective Agency, Inc. with the Detroit Regional Office of the National Labor Relations Board on

December 11, 1962. A true copy of said charge and a covering letter from Thomas Roumell, Regional Director of NLRB, is attached hereto.

3. That on or about December 14, 1962 he received a letter from an attorney of the National Labor Relations Board requesting certain information concerning the substance of the unfair labor practice charge. A true copy of said letter is attached.

4. That on Monday, December 17, 1962 he was interviewed at length by the NLRB attorney, Russell E. Price, about the subject matter of the unfair labor practice charge.

A true copy of a sworn affidavit given to said attorney [fol. 11] and filed with the Regional Office of the National Labor Relations Board on December 18, 1962 is attached hereto.

5. Said NLRB attorney also interviewed defendant, Leo J. Doyle, on the afternoon of December 17, 1962. Mr. Doyle also submitted a sworn affidavit to the National Labor Relations Board.

6. Although affiant had no knowledge of the alleged hand-printed matter referred to in the complaint prior to the service of the unfair labor practice charge upon Local 114 on or about December 13, 1962, said Local Union has been engaged in an organizational drive among the employees of plaintiff's employer in the Detroit area since around the first of November, 1962.

Further affiant sayeth not.

/s/ Benton I. Bilbrey
Benton I. Bilbrey

Subscribed and sworn to before me
this 7th day of January, 1963.

/s/ Ellen L. Hillstrom
Ellen L. Hillstrom
Notary Public, Wayne County,
Michigan
My Commission Expires March 29, 1964.

[fol. 12]

ATTACHMENT TO AFFIDAVIT OF BENTON I. BILBREY

NATIONAL LABOR RELATIONS BOARD

Seventh Region

500 Book Building, Detroit 26, Michigan

7-54

Rev. 5-3-62

Telephone: WOodward 3-9330

December 12, 1962

United Plant Guard Workers of America, Ind.
Local 114
13722 Linwood
Detroit, Michigan

Re: United Plant Guard Workers of America, Ind., Local 114 (Pinkerton's National Detective Agency, Inc.)

Case No. 7-CB-1008

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also attached is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We would appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge.

This case has been assigned to Russell Price, Ext. 251, who will contact you soon. Should you so desire, you are invited to contact him concerning this matter without waiting to hear from him. Please cooperate with him so that all facts of the case may be considered.

Very truly yours,

/s/ THOMAS ROUMELL
Thomas Roumell
Regional Director

Enclosures—2
REGISTERED MAIL

[fol. 13]

NLRB Form 508 entitled "Charge Against Labor Organization or Its Agents"

(See Opposite ☞)

FORM NLRB-508
(2-60)

Form Approved
Budget Bureau No. 64-R003.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: *File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

DO NOT WRITE IN THIS SPACE

CASE NO. 7-CB-1008

DATE FILED 12-11-62

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

UNITED PLANT GUARD WORKERS OF AMERICA (IND.) LOCAL 114

ADDRESS

13722 Linwood, Detroit, Michigan

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) (1) (A) (List subsections) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (*Be specific as to facts, names, addresses, plants involved, dates, places, etc.*)

The above-named labor organization, by its officers, agents, representatives or employees has since on or about December 7, 1962, restrained and coerced employees of the Pinkerton's National Detective Agency, Inc. in the exercise of the rights guaranteed in Section 7 of the Act, by publishing and distributing to the employees of the undersigned employer scurrilous, libelous and false material relating to the representation of those employees by the above-named union.

By the above and other acts not specifically set forth herein, the above-named labor organization has interfered with, restrained and coerced and is interfering with, restraining and coercing those employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

3. NAME OF EMPLOYER

PINKERTON'S NATIONAL DETECTIVE AGENCY, INC.

4. LOCATION OF PLANT INVOLVED (*Street, City, and State*)

2111 Woodward Ave., Room 707, Detroit 1, Michigan

5. TYPE OF ESTABLISHMENT (*Factory, mine, wholesaler, etc.*)	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE	7. NO. OF WORKERS EMPLOYED
Security Service	Guard Service	60

8. FULL NAME OF PARTY FILING CHARGE

Pinkerton's National Detective Agency, Inc.

9. ADDRESS OF PARTY FILING CHARGE (*Street, City, and State*)	10. TEL. NO.
2111 Woodward Ave.; Room 707, Detroit 1, Michigan	WO. 1-2924

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY /s/ Peter B. Cross
(Signature of representative or person making charge)

December 11, 1962
(Date)

Manager
(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 888953

[fol. 14]

ATTACHMENT TO AFFIDAVIT OF BENTON I. BILBREY

NATIONAL LABOR RELATIONS BOARD

Seventh Region

500 Book Building, Detroit 26, Michigan

Telephone: WOodward 3-9330

December 13, 1962

United Plant Guard Workers of
America (Ind.), Local 114
13722 Linwood
Detroit 38, Michigan

Attn: Benton I. Bilbrey, President

Re: United Plant Guard Workers of
America (Ind.), Local 114
(Pinkerton's National Detective
Agency, Inc.)

Case No. 7-CB-1008

Gentlemen:

Please submit to the undersigned the Union's position concerning the Employer's charge that the pamphlets distributed to the employees of Pinkerton's National Detective Agency, Inc., were false.

Would you arrange for any witnesses the Union wishes to present to be preapred to give their testimony at the earliest time that is mutually convenient in regard to the specific charges of the Employer.

In addition, please submit to the undersigned copies of the pamphlets distributed to the above-mentioned employees by the Union.

Thank you for your cooperation in this matter.

Very truly yours,

/s/ RUSSELL E. PRICE
Russell E. Price
Attorney

[fol. 15]

ATTACHMENT TO AFFIDAVIT

AFFIDAVIT OF BENTON I. BILBREY

COUNTY OF WAYNE)
) SS
STATE OF MICHIGAN)

AFFIDAVIT

I, BENTON I. BILBREY, being first duly sworn, upon my oath affirm and say:

I am 46 years of age and reside at 11831 Beaconsfield Avenue, in the Town/City of Detroit, County of Wayne, State of Michigan.

My telephone number is TO. 8-9045. My social security number is 366-10-3667.

I have been employed at U. P. G. W. A. Local 114, located at 13722 Linwood Avenue, Detroit, Michigan, since 1957. My job classification is President.

The following statement is given in reference to five pamphlets allegedly distributed by me as an officer of Local Union 114, U. P. G. W. A. These five pamphlets are identified as one sheet of paper dated December 7, 1962, consisting of seventeen hand printed lines. A second pamphlet of a single sheet hand printed entitled "To All Pinkerton Guards", consisting of twenty-two hand printed lines signed by Leo J. Doyle, former Chairman. A third pamphlet consisting of three pages of hand printed lines containing ten numbered paragraphs entitled "To Full Time Guards—Only Eighteen Left". A fourth pamphlet entitled "Everybody Knows About the Mobil Oil Job", consisting of one page of hand printed lines and containing a newspaper article.

As indicated by the name on the second pamphlet, Leo J. [fol. 16] Doyle, Former Chairman, even though his name does appear on such pamphlet, he is not a member of our Local Union, nor an agent of our union, nor an employee of our Union.

Our official Union record indicates that Leo J. Doyle withdrew from our Union effective March 5, 1962, and a transfer or withdrawal certificate was executed on that date. Further, the Union file contains a dues card for Leo J. Doyle which indicates that he last paid dues for the month of December, 1961, and such dues were paid January 26, 1962. These records cannot be reproduced but I have shown such records to the Labor Board Investigator.

These above described pamphlets were not prepared nor issued by me, nor any officer under my direction in Local Union 114, U. P. G. W. A. My first knowledge of these pamphlets came on December 13, 1962, when unfair labor practice charges were served upon the Union by Registered Mail.

Furthermore, I would not hand out any material from this Union that was not properly signed by me as an officer, or was not signed by another officer of this Union with my approval. I feel that would add dignity to the composition of any material to have it signed by me as an officer of Local 114.

In addition, I would have this done properly by my office staff and with the use of office equipment. I would not draft up something and permit it to be circulated in the form in which these pamphlets were.

Furthermore, I would have the material definitely checked out accurately. I would not use a specific figure as $30,240.00 [fol. 17] profits as contained in pamphlet No. 4. I know from my experience that I would take the precaution to stating approximately so much money profits. I would not put out the unqualified figures such as was done in pamphlet No. 4.

Finally, the items in pamphlets No. 1 and No. 2, pertaining to picketing would never be sent out of my Local Union because under the International Constitution, Article 36, we would not be permitted to threaten picketing. There is a constitutional procedure which provides that the International President and/or the International Executive Board approval must be given before any strike. This provision is also practiced in regard to demonstrations. I, as President of a Local of this International would not attempt on my

own authority to institute a demonstration or picketing or striking without the International sanction.

The fact that the threats of picketing were contained in these pamphlets indicates that I had nothing to do with these pamphlets and further that whoever did prepare these pamphlets was ignorant of the Constitution.

In the event that it was not clear from anything I have said above, not only did I have nothing to do with the preparation of these pamphlets but I had no knowledge of who did prepare them, nor any knowledge that they were being prepared and sent out until I was served with the NLRB charge accusing me of being responsible for such pamphlets.

I hereby certify that I have read the above and fully [fol. 18] understand the contents of the above three (3) pages typewritten and I certify that they are true and correct to the best of my knowledge and belief.

/s/ Benton I. Bilbrey

Subscribed and sworn to before me
this 18th day of December, 1962
at Detroit, Michigan

/s/ Russell E. Price

[fol. 19]

In the United States District Court
For the Eastern District of Michigan

Memorandum of Points and Authorities in Support of Motion to Dismiss—Filed August 19, 1963

I.

The Failure to Allege Diversity of Citizenship Deprives this Court of Jurisdiction.

Douglas vs. UE (U. S. D. C. Ed. Mich.), 127 F. Supp. 795.

Murphy vs. Hotel Employees Union, 102 F. Supp. 488.

II.

The Amount in Controversy Does Not Exceed Ten Thousand Dollars.

As appears on the face of the pleadings, the ad damnum is not made in good faith. *Moore's Federal Practice,* Sec. 0.93.

The burden of proving jurisdictional prerequisites rests upon plaintiff. *Moore's Federal Practice,* Sec. 0.92 (3-1).

III.

The Subject Matter of a Complaint is Within the Exclusive Jurisdiction of the National Labor Relations Board.

San Diego Building Trades vs. Garmon, 359 U. S. 236

Local 438, Laborers vs. Curry (decided Jan. 21, 1963), —— U. S. ——, 52 LRRM 2188.

In *San Diego Building Trades vs. Garmon,* supra, the Supreme Court laid down the following test for determining jurisdiction:

> [fol. 20] "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Sec. 7 of the Taft-Hartley Act, or constitute an unfair labor practice under Sec. 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regulation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted, to allow the States to control conduct which is the subject of national regula-

tion would create potential frustration of national purposes."

The decision makes clear the secondary role to be played by courts:

"At times it has not been clear whether the particular activity regulated by the States was governed by Sec. 7 or Sec. 8 or was, perhaps, outside both these sections. But courts are not primary tribunals to adjudicate such issues. It is essential to the administration of the Act that these determinations be left in the first instance to the National Labor Relations Board. What is outside the scope of this Court's authority cannot remain within a State's power and state jurisdiction too must yield to the exclusive primary competence of the Board."

The finality of NLRB action on a dispute and the foreclosure of further court proceedings thereon was emphasized by Justice Frankfurter as follows:

"It is not for us to decide whether the National Labor Relations Board would have, or should have, decided these questions in the same manner. When an activity is arguable subject to Sec. 7 or Sec. 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted.

[fol. 21] "To require the States to yield to the primary jurisdiction of the National Board does not ensure Board adjudication of the status of a disputed activity. If the Board decides, subject to appropriate federal judicial review, that conduct is protected by Sec. 7, or prohibited by Sec. 8, then the matter is at an end, and the States are ousted of all jurisdiction."

In the recent case of *Local 438, Laborers vs. Curry*, supra, the court re-affirmed *Garmon*:

"The allegations of the complaint, as well as the findings of the Georgia Supreme Court, made out at least an arguable violation of Sec. 8(b) of the National Labor Relations Act, 29 U. S. C. Sec. 158(b). Consequently, the state court had no jurisdiction to issue an injunction or to adjudicate this controversy, which lay within the exclusive powers of the National Labor Relations Board."

In the instant case, plaintiffs have invoked the jurisdiction of NLRB on the very matter which is the subject of this suit. The Regional Director of the National Labor Relations Board has made a determination on the merits and plaintiff has appealed to Washington. The matter is under the control and consideration of the National Labor Relations Board.

Respectfully submitted,

Livingston, Ross & Van Lopik, By: Winston L. Livingston, Attorneys for Defendants, UPGWA, Local 114, Benton I. Bilbrey and W. T. England, 2144 First National Building, Detroit 26, Michigan, WOodward 2-4620.

Dated: January 28, 1963.

[fol. 22]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AFFIDAVIT OF BENTON I. BILBREY—Filed August 19, 1963

State of Michigan,
County of Wayne, ss.

Benton I. Bilbrey, being first duly sworn, deposes and says:

1. That he is the duly elected and acting President of Local 114, United Plant Guard Workers of America, (here-

inafter referred to as "Local 114"), and has served continuously in said capacity since the year 1957.

2. That he has heretofore made an affidavit in this matter on January 7, 1963.

3. That on or about January 7, 1963, he received a letter from Jerome H. Brooks, Acting Regional Director, Seventh Region, National Labor Relations Board, dismissing the unfair labor practice charges filed in Case No. 7-CB-1008. A true copy of said letter is attached hereto.

4. That on or about January 23, 1963, he received a copy of a letter from the Office of the General Counsel of the National Labor Relations Board, addressed to Mr. Donald F. Welday, Jr., attorney for plaintiff, Pinkerton's National Detective Agency, Inc. A true copy of said letter is attached hereto.

Further deponent sayeth not.

Benton I. Bilbrey.

Subscribed and sworn to before me this 28th day of January, 1963.

Ellen L. Hillstrom, Notary Public, Wayne County, Mich., My Commission expires March 29, 1964.

[fol. 23]

ATTACHMENT TO AFFIDAVIT OF BENTON I. BILBREY

NATIONAL LABOR RELATIONS BOARD

Seventh Region

500 Book Building, Detroit 26, Michigan

Telephone 226-3200

January 7, 1963

Pinkerton National Detective Agency, Inc.
2111 Woodward Avenue
Room 707
Detroit 1, Michigan

Re: United Plant Guard Workers of America, Local 114
(Pinkerton National Detective Agency, Inc.)
Case No. 7-CB-1008

Gentlemen:

The above-captioned case charging violations under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it appears there is insufficient evidence of violation, and accordingly further proceedings are not warranted at this time. I am, therefore, refusing to issue complaint in this matter. The basis for refusing to proceed in this matter is as follows:

The above-mentioned charge against United Plant Guard Workers of America, Local 114, was based upon four allegedly objectionable leaflets prepared and circulated by an employee of your company. Such employee was not an officer or member of the charged union, nor was there any evidence that he was acting as an agent of such union. There is no evidence that the union was involved in any respect in the drafting [fol. 24] and circulation of the leaflets. In view of the

fact that the union is not responsible for the distribution of said leaflets, the charge against the union is wholly without basis.

Pursuant to the National Labor Relations Board Rules and Regulations (Section 102.19), you may obtain a review of this action by filing a request for such review with the General Counsel of the National Labor Relations Board, Washington 25, D. C., and a copy with me. This request must contain a complete statement setting forth the facts and reasons upon which it is based. The request must be received by the General Counsel in Washington, D. C., by the close of business on January 21, 1963. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file.

Very truly yours,

Jerome H. Brooks
Acting Regional Director

cc: General Counsel
National Labor Relations Board
Washington 25, D. C.

Statistical Analysis Branch

United Plant Guard Workers of
America, Local 114
13722 Linwood Avenue
Detroit 38, Michigan

Welday, O'Leary & Goldstone
1180 First National Building
Detroit 26, Michigan

Attn: Donald F. Welday, Jr., Esq.

[fol. 25]

ATTACHMENT TO AFFIDAVIT OF BENTON I. BILBREY

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel

Washington 25, D. C.

January 22, 1963

Re: United Plant Guard Workers of America, Local 114 (Pinkerton National Detective Agency, Inc.) Case No. 7-CB-1008

Mr. Donald F. Welday, Jr.
Attorney at Law
Welday, O'Leary & Goldstone
1180 First National Building
Detroit 26, Michigan

Dear Mr. Welday:

This is to acknowledge receipt of your request for review of the Regional Director's refusal to issue complaint in the above matter. With respect to your request for an extension of time, you are hereby granted until January 31, 1963, to file any additional information you desire in support of your appeal. Please furnish the Regional Director with a copy.

Please be assured your request will receive careful consideration and you will be advised, as soon as possible, after January 31, when a decision has been reached.

Very truly yours,

Stuart Rothman
General Counsel

By /s/ IRVING M. HERMAN
Director, Office of Appeals

cc: Director, 7th Region

Pinkerton National Detective Agency, Inc., 2111 Woodward Ave., Room 707, Detroit 1, Michigan

United Plant Guard Workers of America, Local 114, 13722 Linwood Avenue, Detroit 38, Michigan

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[fol. 26]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS—
Filed August 19, 1963

Plaintiffs in the above entitled consolidated actions, by and through their attorneys, Welday, O'Leary & Goldstone, herewith submit to the Court, pursuant to its request, their Brief in opposition to the Motions to Dismiss heretofore filed by defendant union and defendants Bilbrey and England. It is plaintiff's understanding that the question presented is as follows:

> May plaintiffs maintain their respective actions for damages as a result of alleged libel on the part of defendants, or, has Congress given exclusive jurisdiction of the type of matters here presented to the National Labor Relations Board?

I

Defendants Union, Bilbrey and England (hereinafter called defendants) have moved the Court to dismiss the pending actions "because this Court lacks jurisdiction over the subject matter. The subject matter of both counts of the complaint(s) involve matters relating to the self organization rights and concerted activities of employees under the Labor Management Relations Act of 1947, as amended, 29 U. S. C. 151 et seq. All of the conduct complained of in both counts of said complaint is arguably protected by Section 7 of said statute, or prohibited by Section 8, and is within the exclusive jurisdiction of the National

Labor Relations Board." (para. 3, Defendants Motion to Dismiss)

Plaintiffs maintain that while the proposition stated is a true statement of the law, in the abstract, it does not apply [fol. 27] to the instant situation.

II

The situation presented would seem to be controlled by two cases of the United States Supreme Court, to wit: *United Construction Workers vs. Laburnum Construction Co.*, (1954) 347 US 656, and *San Diego Unions vs. Gorman* (1959) 359 US 236.

(a)

In *Laburnum,* the Company sued the union in tort for compensatory and punitive damages. The Company was performing certain construction work it had under contract when Union representatives appeared upon the scene and demanded that the Company's employees join their union. Upon refusal to yield to these demands, Union agents threatened and intimidated the Company's employees with such violence that the Company was forced to abandon its work. The Union was ultimately found liable for compensatory damages in the amount of $100,000.00, by the State Courts of Virginia.

Upon Appeal to the U. S. Supreme Court, the issue was limited to the exclusiveness of the jurisdiction of the National Labor Relations Board (hereinafter called N. L. R. B.) in a common law tort action based on this conduct.

The Supreme Court assumed "the conduct before us also constituted an unfair labor practice" within Sec. 8 of the Labor Management Relations Act (L. M. R. A.). (660, 661). The court held:

> "Here Congress has neither provided nor suggested any substitute for the traditional state court procedure [fol. 28] for collecting damages for injuries caused by tortious conduct. For us to cut off the injured respondent (i.e., the Company) from this right of recovery

will deprive it of its property without recourse or compensation. To do so will, in effect, grant petitioners (the Union) immunity from liability for their tortious conduct." (663, 664) and at page 669, the Court said:

> "If petitioners were unorganized private persons, conducting themselves as petitioner did here, Virginia would have had undoubted jurisdiction of this action against them. The fact that petitioners are labor organizations, with no contractual relationship with respondent or its employees, provides no reasonable basis for a different conclusion."

(b)

The *Gorman* case has, concededly, made a serious inroad upon the *Laburnum* holding, and *Gorman* is the controlling law today.

Gorman limits *Laburnum* to a holding that State jurisdiction may prevail in a situation where there is a compelling state interest in the maintenance of domestic peace, not overridden by *clearly expressed Congressional direction.*

Gorman sought an injunction and damages against the Union in the California State Courts based upon the [fol. 29] Union's peaceful picketing of Gorman's place of business. Ultimately, Gorman was denied the injunctive relief sought, but was allowed damages ($1,000.00) by the California Supreme Court.

The United States Supreme Court reversed saying (at p. 245):

> "When an activity is arguably subject to s. 7 or s. 8 of the Act, the States as well as the Federal Courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

and went on to say (at page 247)

> "It is true that we have allowed the States to grant compensation for the consequences, as defined by the

> traditional law of torts, of conduct marked by violence and imminent threats to the public order."

but (at page 248)

> "In the present case there is no such compelling state interest."

(c)

In the instant case before the Court, there is a compelling state interest. For, if the allegations in plaintiff's Bill are correct, defendants committed not only a tort but also a *crime.*

The appropriate Michigan Statute recites:

> "Any person who shall falsely and maliciously, by word, writing, sign or otherwise accuse, attribute, or impute to another the commission of any crime, felony [fol. 30] or misdemeanor, or any infamous or degrading act . . . shall be guilty of a misdemeanor." MSA 28.602

Plaintiffs do not concede that the *Gorman* case has prohibited an action where the tortious conduct complained of is also criminal under the laws of the State. Similarly, plaintiffs suggest that nothing in the L. M. R. A. condones (protects) libel nor is it specifically prohibited, hence there is here an "absence of clearly expressed congressional direction" (359 U. S. at 247) to invade traditional state jurisdiction in intentional-tort situations.

Plaintiff Pinkerton urges that defendants' motion be denied.

III

Plaintiffs herein assume that if there is any merit at all to defendants' motion and argument, it would relate only to plaintiff corporation (as the employer). Surely, there is nothing in the law which would bar plaintiff Linn, *a private citizen* from maintaining his action for libel against these defendants.

Linn is not the "employer" in this matter, but simply an employee (albeit, in a managerial position). There is absolutely nothing in any of the cited cases (or any case relying thereon) which would indicate that one in Linn's position is barred from maintaining an action such as involved herein.

[fol. 31] Conclusion

Plaintiffs in both of these consolidated cases submit that the respective motions to dismiss be denied.

Respectfully submitted,

Welday, O'Leary & Goldstone, By Donald F. Welday, Jr., Attorneys for Plaintiff, 1180 First National Building, Detroit 26, Michigan, WOodward 5-5110.

[fol. 32]

In United States District Court
For the Eastern District of Michigan

Answer to Plaintiffs' Brief in Opposition to Motion to Dismiss—Filed August 19, 1963

Motions to dismiss both of the above causes based upon several grounds were filed by defendants herein. At the close of oral arguments on the motions, counsel for plaintiffs was questioned by the Court as to plaintiffs' right to seek relief in two forums at the same time. Plaintiffs were granted permission to file a brief in answer to this question. However, the brief filed does not purport to answer this question, but instead discusses the jurisdiction of this Court. And, an examination of the two cases cited by plaintiffs clearly shows that this Court lacks jurisdiction over the subject matter of these actions.

Plaintiffs state the general rule enunciated in *San Diego Building Trades vs. Garmon,* 359 U. S. 236 (1959):

"When an activity is arguably subject to Section 7 or Section 8 of the Act, the States as well as the federal

> courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

Plaintiffs seek to avoid the rule by relying on the exception also stated in the *Garmon* case:

> "It is true that we have allowed the States to grant compensation for the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order . . . We have also allowed the States to enjoin such conduct . . . State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction."

[fol. 33] Plaintiffs claim that the present cases involve a "compelling state interest" because the conduct complained of is criminal under the laws of the State as well as tortious. It is also claimed this "compelling state interest" is not overridden by clearly expressed congressional direction.

The "compelling state interest" referred to in the *Garmon* case is the State's interest "in the maintenance of domestic peace," the State's right to prevent "conduct marked by violence and imminent threats to the public order." A libelous statement could not fall within this exception.

Moreover, the fact that the conduct alleged may also be criminal is immaterial. Criminal sanctions are readily available to the State. In *Local 438, Laborers vs. Curry* (decided January 21, 1963), —— U. S. ——, 52 LRRM 2188, the United States Supreme Court reaffirmed *Garmon* in a situation involving conduct which might also have been a violation of the criminal laws of Georgia.

The fact that the corporate plaintiff filed an unfair labor practice charge alleging facts similar to those involved in the instant cases, which were subsequently commenced, and the facts regarding the disposition of this charge illustrate

the potential conflict if this Court retains jurisdiction of these actions.

Affidavits previously filed herein, dated January 7 and January 28, 1963, show that the Acting Regional Director refused to issue a complaint on the charge because there was no evidence that the Union was responsible for the distribution of the material complained of and that the employer [fol. 34] requested a review of this action by the General Counsel of the National Labor Relations Board. The Acting Regional Director stated that:

> "The basis for refusing to proceed in this matter is as follows:
>
> "The above-mentioned charge against United Plant Guard Workers of America, Local 114, was based upon four allegedly objectionable leaflets prepared and circulated by an employee of your company. Such employee was not an officer or member of the charged union, nor was there any evidence that he was acting as an agent of such union. There is no evidence that the union was involved in any respect in the drafting and circulation of the leaflets. In view of the fact that the union is not responsible for the distribution of said leaflets, the charge against the union is wholly without basis."

The affidavit attached hereto shows that the Office of the General Counsel sustained the ruling of the Regional Director. These determinations were made after careful investigation by an administrative agency "armed with its own procedures, and equipped with its specialized knowledge and cumulative experience." (*San Diego Building Trades Council vs. Garmon*, supra).

Where an activity is *arguably* subject to Section 7 or Section 8 of the Act, the courts must defer to the exclusive jurisdiction of the Board. Certainly, where, as here, the Board has asserted jurisdiction, made an investigation and final determination, the exclusive jurisdiction of the Board must be sustained to avoid conflicting determinations and

subversion of the national policy of uniformity and consistent standards of law and remedies.

[fol. 35] The individual plaintiff Linn is not specifically named in the material complained of in either action. The conduct alleged affects him solely in his capacity as manager of the corporate plaintiff. Linn, as an admitted agent of the corporate plaintiff, is an "employer" as that term is defined in Section 2(2) of the Labor Management Relations Act (29 U. S. C. A. Sec. 152(2)). The acts complained of by him are also arguably unfair labor practices, and, as to these the National Labor Relations Board also has exclusive jurisdiction.

Defendants respectfully submit that their motions to dismiss the above causes should be granted.

Livingston, Ross & Van Lopik, By: Nancy Jean Van Lopik, Attorneys for Defendants, 2144 First National Building, Detroit 26, Michigan, WOodward 2-4620.

Dated: May 7, 1963.

[fol. 36]

ATTACHMENT TO ANSWER TO PLAINTIFFS' BRIEF IN OPPOSITION TO MOTION TO DISMISS AFFIDAVIT OF BENTON I. BILBREY—Filed August 19, 1963

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

BENTON I. BILBREY, being first duly sworn, deposes and says:

1. That he is the duly elected and acting President of Local 114, United Plant Guard Workers of America, as set forth in his affidavits previously filed in this cause and dated January 7 and January 28, 1963.

2. That this affidavit is supplementary to said previous affidavits.

3. That on or about the 14th day of February, 1963, he received a copy of a communication from the Office of the General Counsel of the National Labor Relations Board addressed to Mr. Donald F. Welday, Jr., attorney for plaintiff, Pinkerton's National Detective Agency, Inc. A true copy of said communication is attached hereto.

Further deponent sayeth not.

/s/ Benton I. Bilbrey
Benton I. Bilbrey

Subscribed and sworn to before me
this 30th day of April, 1963.

/s/ Ellen L. Hillstrom
Ellen L. Hillstrom

Notary Public, Wayne County, Michigan
My Commission expires March 29, 1964.

[fol. 37]

Attachment to Affidavit of Benton I. Bilbrey

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel

Washington 25, D. C.

February 13, 1963

Re: United Plant Guard Workers of
America (IND) Local 114
(Pinkerton National Detective
Agency, Inc.)
Case No. 7-CB-1008

Mr. Donald F. Welday, Jr.
Attorney at Law
Welday, O'Leary & Goldstone
1180 First National Building
Detroit 26, Michigan

Dear Mr. Welday:

Your appeal from the Regional Director's refusal to issue complaint in the above case, charging violations under Section 8 of the National Labor Relations Act, has been duly considered.

This Office sustains the ruling of the Regional Director. It was concluded that the evidence disclosed was insufficient to establish that the Union was responsible for the preparation or circulation of the leaflets in question by Doyle, an employee of the Company. In this connection, it was noted that Doyle, who was not a Union member, had neither real nor apparent authority from the Union to act on its behalf. Under all the circumstances, therefore, further proceedings herein were deemed unwarranted.

Very truly yours,

Stuart Rothman
General Counsel

By .....
Irving M. Herman
Director, Office of Appeals

cc: Director, 7th Region
Pinkerton National Detective Agency, Inc.,
2111 Woodward Avenue, Room 707,
Detroit 1, Michigan
United Plant Guard Workers of America, Local 114,
13722 Linwood Avenue,
Detroit 38, Michigan

CERTIFIED MAIL

[fol. 38]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

MEMORANDUM OPINION GRANTING DEFENDANTS' MOTION TO DISMISS—June 5, 1963

These are libel actions, based upon certain defamatory communications allegedly sent by defendants to employees of Pinkerton's National Detective Agency, hereinafter referred to as Pinkerton's. The plaintiff in Civil Action No. 23331, William C. Linn, is a supervisory employee of Pinkerton's who alleges that he was personally libelled by the communications in question.

Defendants in both actions are Local 114 of the United Plant Guard Workers of America, Benton I. Bilbrey, President of Local 114, W. T. England, Vice-President of Local 114, and one Leo J. Doyle, an employee of Pinkerton's who is not alleged to be either an officer or a member of Local 114.

There is no independent federal ground for the bringing of these actions in this Court. If they are properly before this Court, they can only be here on the basis of diversity of citizenship.

Prior to the commencement of these actions, Pinkerton's requested the National Labor Relations Board, hereinafter the NLRB, to issue a complaint against Local 114 on the ground that publication of the allegedly libelous communications constituted an unfair labor practice. After making his investigation, the Regional Director refused to issue a complaint. He found that the communications in question had been prepared by defendant Doyle, who was not a member of Local 114 and who had neither real nor apparent authority to act on behalf of Local 114. He concluded that there was no evidence to establish that Local 114 was involved in any way in the drafting or circulation of the pub-
[fol. 39] lications in question. This decision was appealed by Pinkerton's. The Appeals Office of the National Labor Relations Board on February 13 denied the appeal and sustained the ruling of the Regional Director.

Defendant Local 114, Bilbrey and England have moved for dismissal of both actions on the ground, inter alia, that exclusive jurisdiction over the subject matter lies in the NLRB and that this Court lacks authority to grant plaintiffs any relief. So far as the moving defendants are concerned, this contention is sound and must be sustained.

If Local 114 or its President or Vice-President were in fact responsible for distributing to Pinkerton's employees a false and defamatory publication which would tend to affect adversely the relations between Pinkerton's and its employees, this would arguably constitute an unfair labor practice under Section 8(b) of the National Labor Relations Act, a fact which Pinkerton's has tacitly admitted in requesting the Regional Director of the NLRB to issue a complaint. Even if Pinkerton's had not initially followed this course of action, however, this Court, sitting in these diversity actions as, "in effect, only another court of the State," *Guaranty Trust Co. v. York* (1945), 326 US 99, 108, would be without authority to give plaintiffs any relief against the moving defendants. The applicable rule has been laid down by the Supreme Court in *San Diego Building Trades v. Garmon* (1959), 359 US 236:

> "When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by Sec. 7 of the Taft-Hartley Act, or constitute an unfair labor practice under Sec. 8, due regard for the federal enactment requires that state jurisdiction must yield. To leave the States free to regulate conduct so plainly within the central aim of federal regu- [fol. 40] lation involves too great a danger of conflict between power asserted by Congress and requirements imposed by state law. Nor has it mattered whether the States have acted through laws of broad general application rather than laws specifically directed towards the governance of industrial relations. Regardless of the mode adopted to allow the States to control conduct which is the subject of national regulation would create potential frustration of national purposes." 359 US 236, 244.

The moving defendants are entitled to dismissal of both actions as to them. An appropriate order may be presented.

Defendant Doyle has not moved for dismissal of the complaints against him, and the Court notes that the pre-emption argument would not appear to be applicable in his case. With dismissal of the other defendants, both suits are reduced to simple common-law tort actions. Local 114 has disclaimed any responsibility for the activities of defendant Doyle and this disclaimer has been upheld by both the Regional Director and the Office of Appeals of the NLRB. If, as alleged, defendant Doyle libelled Pinkerton's or Linn, this is a private matter which may aptly be resolved in this Court, if the usual jurisdictional requirements have been satisfied.

On the question of jurisdictional requirements, the Court observes that in both of these actions plaintiffs have attempted to satisfy the statutory requirement for diversity of citizenship by making certain allegations regarding the "residence" of the several plaintiffs and defendants. It is well-established that allegations regarding the residence of the parties are not sufficient to support federal jurisdiction in an action brought in a federal court on the basis of [fol. 41] diversity of citizenship. *Fort Knox Transit v. Humphrey* (6th Cir. 1945), 151 F2d 602.

If plaintiffs have not amended their complaints within ten days of the filing of this memorandum to sufficiently allege diversity of citizenship, defendant Doyle may present an order of dismissal to the Court for signature.

Talbot Smith, United States District Judge.

June 5, 1963, Detroit, Michigan.

[fol. 42]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

AMENDED COMPLAINT—Filed June 7, 1963

Now comes William C. Linn, plaintiff herein, by and through his attorneys, Welday, O'Leary & Goldstone, and amends his complaint heretofore filed as follows:

Count I

1. Paragraph 1 of Count I of said Complaint is amended to read thus:

That at the time and date of filing of this cause, plaintiff William C. Linn is a citizen and resident of the State of Ohio and all of the members of defendant United Plant Guard Workers of America, Local 114, a labor association, and defendants Leo J. Doyle, Benton I. Bilbrey and W. T. England are residents of and citizens of the State of Michigan. The matter in controversy exceeds, exclusively of interest and costs, the sum of Ten Thousand ($10,000.00) Dollars.

2. The plaintiff incorporates by reference herein the entire contents of the balance of Count I of the Complaint heretofore filed and realleges those paragraphs exactly as if they were here so stated.

Count II

1. Paragraph 1, of Count II, of the said Complaint, is amended to read thus:

Plaintiff realleges all those allegations contained in Paragraph 1 of Count I of its Amended Complaint, and Paragraphs 2 and 3 of Count I of his original Complaint, and said Counts are restated and incorporated hereunder by reference thereto.

[fol. 43] 2. Plaintiff incorporates by reference herein the entire contents of the balance of Count II of the Complaint

heretofore filed and realleges those paragraphs exactly as if they were here so stated.

Wherefore, plaintiff demands judgment against the defendants herein jointly and severally in the amount of One Million and no/100 ($1,000,000.00) Dollars, together with costs and attorney fees so most wrongfully sustained.

Welday, O'Leary & Goldstone, By: Donald F. Welday, Jr., Attorneys for the Plaintiff, 1180 First National Building, Detroit 26, Michigan, WOodward 5-5110.

[fol. 44]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER GRANTING MOTION TO DISMISS FOR LACK OF JURISDICTION OVER SUBJECT MATTER—June 20, 1963

Present: Honorable Talbot Smith, District Judge.

The motion of defendants, United Plant Guard Workers of America, Benton I. Bilbrey and W. T. England, to dismiss the action for want of jurisdiction of the subject matter having been heard on January 28, 1963, the plaintiff appearing by Donald F. Welday, Jr. and said defendants by Winston L. Livingston, their respective attorneys; and the parties having thereafter filed briefs in support of their respective positions; and the Court being fully advised in the premises; and in accordance with its opinion granting defendants' motion filed June 5, 1963;

It Is Ordered that the motion be granted, and judgment entered dismissing the complaint, as amended, for want of jurisdiction of the subject matter as to defendants, United Plant Guard Workers of America, Benton I. Bilbrey and W. T. England.

Talbot Smith, U. S. District Judge.

Approved as to form:

Donald F. Welday, Jr., Esq., Attorney for Plaintiffs.

[fol. 46] Minute entry of argument and submission—April 13, 1964 (omitted in printing).

[fol. 47]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 15548

WILLIAM C. LINN, Plaintiff-Appellant,

v.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY, W. T. ENGLAND, jointly and severally, Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Michigan.

OPINION—Decided October 13, 1964

Before CECIL and O'SULLIVAN, Circuit Judges, and MILLER, District Judge.

O'SULLIVAN, Circuit Judge. This appeal presents the question whether the National Labor Relations Board has preempted the diversity jurisdiction of a district court to entertain an action to recover damages for libel committed by a union and its officers in the course of, and arising out of tactics employed in, a union's organization campaign. The District Court so held in dismissing, on motion, such an action commenced by a management official against a union and its officers. On the authority of *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236 (1959), and the Supreme Court's decisions following *Garmon*, we affirm.

Plaintiff-appellant, William C. Linn, was at the times involved in 1962 an assistant general manager for the

North Central Region of Pinkerton's National Detective Agency, Inc. The complaint charged that during a campaign to organize Pinkerton's employees, defendant-appellee, United Plant Guard Workers of America, Local 114, [fol. 48] and defendants-appellees, Benton I. Bilbrey, President of the union local and W. T. England, its Vice-President, and one Leo J. Doyle, a Pinkerton guard, conspired to and did utter, publish, circulate and mail written matter maliciously libelling and defaming plaintiff Linn. For consideration of the question before us we accept that these statements were false, malicious, clearly libelous and damaging to plaintiff Linn, albeit they were relevant to the union's campaign.

Linn's employer filed an unfair labor practice charge against the union based upon the libelous material, but the Board's Acting Regional Director refused to issue a complaint upon his determination that "there is no evidence that the union was involved in any respect in the drafting and circulation of the leaflets." This refusal was affirmed by the N.L.R.B. Office of Appeals on February 13, 1963. On June 5, 1963, the District Judge filed a memorandum opinion supporting his order of dismissal stating:

> "If Local 114 or its President or Vice-President were in fact responsible for distributing to Pinkerton's employees a false and defamatory publication which would tend to affect adversely the relations between Pinkerton's and its employees, this would arguably constitute an unfair labor practice under Section 8(b) of the National Labor Relations Act. . . . "

and from this reasoned that the District Court was "without authority to give plaintiffs any relief against the moving defendants" (the union and its officers) under the now familiar language of *Garmon*: "when an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." 359 U.S. 245.

The *Garmon* decision appears to have been accepted as setting at rest the uncertainties that had remained as to just what traditional remedies could still be employed in the state courts to redress wrongs committed in the collisions between employers and employees' unions. It has been assumed that since *Garmon* the states can intrude into this field only when some "compelling state interest" such as "the maintenance of docestic peace" called for exercise of a state's traditional remedies. And it likewise [fol. 49] is assumed that only violence or the threat of violence will permit a state court to act. The considerations urged to sustain judicial jurisdiction in the present case were tentatively reflected in pre-*Garmon* decisions of the Supreme Court, and after full consideration were limited to the particular circumstances of those decisions by *Garmon* and subsequent decisions. Thus in *United Automobile Workers* v. *Russell,* 356 U.S. 634 (1958), and *United Constr. Workers* v. *Laburnum Constr. Corp.,* 347 U.S. 656, 98 L. Ed. 1025 (1954), the Supreme Court affirmed state court judgments for damages inflicted by the tortious conduct of labor unions committed as part of their organizational efforts. While each of these cases involved violence or threats of violence, neither of them relied on *violence* as the essential ingredient of permissible state action. Rather, it appeared that state jurisdiction was sustained because of the inadequacy of the National Labor Relations Act as a means of compensating for damaging torts. The opening paragraph of *Laburnum* announced the breadth of its holding.

> "The question before us is whether the Labor Management Relations Act, 1947, has given the National Labor Relations Board such exclusive jurisdiction over the subject matter of a *common-law tort action for damages* as to preclude an appropriate state court from hearing and determining its issues where such conduct constitutes an unfair labor practice under that Act. *For the reasons hereafter stated, we hold that it has not.* 347 U.S. 657, 98 L. Ed. 1027. (Emphasis supplied.)

Laburnum further expressed the view that "to the extent . . . that Congress has not prescribed procedure for dealing with the consequences of tortious conduct already committed, [as distinguished from preventive procedure], there is no ground for concluding that existing . . . *liabilities for tortious conduct have been eliminated.*" 347 U.S. 665, 98 L. Ed. 1031. (Emphasis supplied.) The Supreme Court also there took occasion to distinguish between its holding of Federal preemption in *Garner* v. *Teamsters Local 776,* 346 U.S. 485, 98 L. Ed. 228 (1953) and its approval of state jurisdiction in the *Laburnum* case then before it, saying that,

> "In the Garner Case, Congress had provided a federal administrative remedy, supplemented by judicial pro-[fol. 50] cedure for its enforcement, with which the state injunctive procedure conflicted. Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. *For us to cut off the injured respondent from this right of recovery will deprive it of its property without recourse or compensation.* 347 U.S. 663-64, 98 L. Ed. 1031. (Emphasis supplied.)

The decision in *United Automobile Workers* v. *Russell,* 356 U.S. 634 (1958) appeared to express the same concern for retaining a state's right to redress damages inflicted on its citizens by tortious misconduct committed during the course of labor strife. As in *Laburnum,* the tortious conduct contained a *threat* of violence, since "the [picket] line consisted of persons standing along the street or walking in a compact circle across the entire traveled portion of the street. Such pickets, on July 18, by force of numbers, threats of bodily harm to Russell and of damage to his property, prevented him from reaching the plant gates. At least one striker took hold of Russell's automobile." While mentioning the threat of violence, it does not appear that *violence* was the sole reason for allowing Russell to recover damages for tortious interference with his means of earn-

ing a livelihood. Rather, the Court seemed to emphasize the lack of power in the NLRB to grant adequate relief. It said, "this section [§ 10(c) of the Act] is far from being an express grant of exclusive jurisdiction superseding common-law actions, by either an employer or an employee, to recover damages caused by the tortious conduct of a union. . . . We conclude that an employee's right to recover, in the state courts, *all* damages caused him by this kind of tortious conduct cannot fairly be said to be pre-empted without a clearer declaration of congressional policy than we find here." 356 U.S. 642, 646.

Without any intervening relevant amendment to the National Labor Relations Act, however, the Court in *Garmon* limited the application of *Laburnum* and *Russell* to torts involving violence.

> "It is true that we [in *Laburnum* and *Russell*] have allowed the States to grant compensation for the consequences as defined by the traditional law of torts, of conduct marked by *violence and imminent threats to* [fol. 51] *the public order*. . . . State jurisdiction has prevailed in these situations because the *compelling state interest,* in the scheme of our federalism, *in the maintenance of domestic peace* is not overridden in the absence of clearly expressed congressional direction. We recognize that the opinion in *United Construction Workers* v. *Laburnum Corp.,* 347 U.S. 656, found support in the fact that the state remedy had no federal counterpart. But that decision was determined, as is demonstrated by the question to which review was restricted, by the 'type of conduct' involved, *i.e.,* 'intimidation and threats of violence.' In the present case there is no such compelling state interest." 359 U.S. 247-48. (Emphasis supplied.)

The plaintiff here argues that we should recognize as a "compelling state interest" the protection of an individual's good name and reputation and thus come within the one exception to the preemptive rule of *Garmon.* It is indeed clear that physical assault and battery and libelous assault

upon a citizen's good name are both torts that cannot be compensated by a "cease and desist" order of the NLRB. An individual might quickly recover from the bruises and wounds of a physical assault and at little expense have a crumpled fender bumped out, but a lifetime may not be sufficient to restore a reputation hurt by the circulation of a vicious libel. We are persuaded, however, that *Garmon* has drawn the distinction which permits the one to be remedied by traditional court action and limits the other to the relief, if any, that may come from an order of the NLRB. And if a Regional Director's refusal to issue a complaint is sustained by the Board's General Counsel as happened to the company's charge in this case, the libelled individual is at the end of the remedial road. Compare *Dunn* v. *Retail Clerks Internat'l Ass'n,* 307 F(2) 285 (CA 6, 1962).

Our conclusion that *Garmon* has foreclosed plaintiff's entry into the courts is supported by the later decisions in *Local 100, United Ass'n of Journeymen & Apprentices* v. *Borden,* 373 U.S. 690 (1963) and *Local 207, Internat'l Ass'n of Bridge Workers* v. *Perko,* 373 U.S. 701 (1963) wherein, in obedience to *Garmon,* state courts were denied jurisdiction to entertain actions by workmen for intentional and tortious interference by a union with their means of [fol. 52] earning a livelihood. Such interference involved no *physical violence* and therefore the one exception recognized in *Garmon* was absent. We think that there would be as "compelling" a state interest to protect the workman's right to earn his wages as to protect his employer's good name, but such an interest was found insufficient justification for state jurisdiction in *Borden* and *Perko.*

Such courts as have had occasion since *Garmon* to consider the question of federal preemption of libel suits arising out of union organizational activity have concluded that state jurisdiction does not exist. *Hill* v. *Moe,* 367 P(2) 739 (Alaska 1961), *cert. denied,* 370 U.S. 916 (1962); *Blum* v. *International Ass'n of Machinists,* 42 N.J. 389, 201 A(2) 46 (1964); *Schnell Tool & Die Corp.* v. *Steel Workers,* 32 U.S.L. Week 2534 (Ohio Com. Pl. March

13, 1964). The only expression of a contraory view is found in the opinion of the three dissenters in *Blum* v. *Internat'l Ass'n of Machinists, AFL-CIO, supra.* We are satisfied that under *Garmon* these dissenters were wrong. We respect their dissent, however, as an understandable cry of anguish.

Our holding in this case is of course limited to a suit for libelous statements growing out of and relevant to a union's campaign to organize the employees of an employer subject to the National Labor Relations Act. We mention too that it is not necessary for us to inquire whether the individual defendant, Doyle, a Pinkerton employee, could have obtained dismissal by appropriate motion. He did not so move.

Judgment affirmed.

[File endorsement omitted]

[fol. 53]

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 15,548

WILLIAM C. LINN, Plaintiff-Appellant,

vs.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, a labor association, LEO J. DOYLE, BENTON I. BILBREY and W. T. ENGLAND, jointly and severally, Defendants-Appellees.

JUDGMENT—Filed October 13, 1964

Before: Cecil and O'Sullivan, Circuit Judges, and William E. Miller, District Judge.

Appeal from the United States District Court for the Eastern District of Michigan.

This Cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Michigan, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that defendants-appellees recover from plaintiff-appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

Carl W. Reuss, Clerk.

[fol. 54] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

SUPREME COURT OF THE UNITED STATES
No. 819—October Term, 1964

WILLIAM C. LINN, Petitioner,

v.

UNITED PLANT GUARD WORKERS OF AMERICA, LOCAL 114, et al.

ORDER ALLOWING CERTIORARI—May 24, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.